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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/826,087	04/16/2004	Anthony Jones	101	9246

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EXAMINER

STASHICK, ANTHONY D

ART UNIT PAPER NUMBER

3728

DATE MAILED: 01/07/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

10/826,087

Applicant(s)

JONES, ANTHONY

Examiner

Anthony Stashick

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-16 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-16 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 16 April 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

## Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_.

## DETAILED ACTION

### *Claim Rejections - 35 USC § 103*

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 1, 3-5, 8-9, 11-13 and 16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Marcellus 1,257,086 in view of Gianetti 4,215,491. Marcellus '086 discloses substantially all the limitations as claimed including the following: a shoe 1 for providing therapeutic treatment; the shoe having a waterproof flexible shoe member having a sidewall portion 4 and a sole portion (that shown at arch area 5 in Figure 1) adapted to receive a therapeutic solution and a user's foot therein; the shoe member structurally arranged to receive and enclose the user's foot with the therapeutic solution therearound (therapeutic solution is surrounding the foot in 7); the sole portion having an upper surface engageable with the user's foot (see Figure 1) and a lower surface engageable with a supporting surface (that in Figure 1 the is the outer side of the sole bottom); the sidewall portion of the shoe member has an upper end portion (located near 13) having sealing means 13 which secures the shoe to the ankle/leg of the user; the lower surface having traction members (8 and 9) attached thereto to provide protection of the flexible shoe during usage; the shoe made up of outer cover member and inner waterproof member (see Figure 1, the casing is made of two layers separated by fluid layer 7). Marcellus '086 does not teach the use of texturizing members on the upper surface of the sole member for massaging the user's foot with these texturizing members being located in the heel and sole area of the user's foot. Gianetti '491 teaches that it is desirable to have massaging protrusions 52 located over the entire inner surface of the boot and sole to massage and scrub the user's foot to aid in cleaning the user's foot.

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Therefore, it would have been obvious, to one of ordinary skill in the art at the time the invention was made, to place projections nodules, such as those taught in Gianetti '491, on the inside surface of the boot of Marcellus '086, to aid in massaging and cleaning the user's foot during use.

3. Claims 1 and 3-7 are rejected under 35 U.S.C. 103(a) as being unpatentable over Palmer et al. 4,622,035 in view of Gianetti 4,215,491. Palmer et al. '035 discloses substantially all the limitations as claimed including the following: a shoe 10 for providing therapeutic treatment; the shoe having a waterproof flexible shoe member 17 having a sidewall portion (that which follows the side of the user's foot) and a sole portion (that shown as the sole in Figure 3) adapted to receive a therapeutic solution and a user's foot therein; the shoe member structurally arranged to receive and enclose the user's foot with the therapeutic solution therearound (therapeutic solution is surrounding the foot and controlled by 15); the sole portion having an upper surface engageable with the user's foot (see Figures 1-3) and a lower surface engageable with a supporting surface (that in Figures 1-3 the is the outer side of the sole bottom); the sidewall portion of the shoe member has an upper end portion (located near 11) having sealing means 13 which secures the shoe to the ankle/leg of the user; sealing means is interlocking hook and loop (see col. 4, lines 1-6) or snaps (snaps are art accepted equivalent fastening means). Palmer et al. '035 does not teach the use of texturizing members on the upper surface of the sole member for massaging the user's foot with these texturizing members being located in the heel and sole area of the user's foot. Gianetti '491 teaches that it is desirable to have massaging protrusions 52 located over the entire inner surface of the boot and sole to massage and scrub the user's foot to aid in cleaning the user's foot. Therefore, it would have been obvious, to one of ordinary skill in the art at the time the invention was made, to place projections nodules, such as those taught in Gianetti '491, on the inside surface of the boot of Palmer et al. '035, to aid in massaging and cleaning the user's foot during use.

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4. Claims 1, 3-5 and 8 are rejected under 35 U.S.C. 103(a) as being unpatentable over Basa 3,749,091 in view of Gianetti 4,215,491. Basa '091 discloses substantially all the limitations as claimed including the following: a shoe 1 for providing therapeutic treatment; the shoe having a waterproof flexible shoe member 5 having a sidewall portion and a sole portion 3 adapted to receive a therapeutic solution and a user's foot therein; the shoe member structurally arranged to receive and enclose the user's foot with the therapeutic solution therearound (see Figure 1 and Abstract); the sole portion having an upper surface engageable with the user's foot (see Figure 1) and a lower surface engageable with a supporting surface (that in Figure 1 the is the outer side of the sole bottom); the sidewall portion of the shoe member has an upper end portion (located near 21) having sealing means 17 which secures the shoe to the ankle/leg of the user; the lower surface portion having traction members 3 attached thereto. Basa '091 does not teach the use of texturizing members on the upper surface of the sole member for massaging the user's foot with these texturizing members being located in the heel and sole area of the user's foot 3. Gianetti '491 teaches that it is desirable to have massaging protrusions 52 located over the entire inner surface of the boot and sole to massage and scrub the user's foot to aid in cleaning the user's foot. Therefore, it would have been obvious, to one of ordinary skill in the art at the time the invention was made, to place projections nodules, such as those taught in Gianetti '491, on the inside surface of the boot of Basa '091, to aid in massaging and cleaning the user's foot during use.

5. Claim 2 is rejected under 35 U.S.C. 103(a) as being unpatentable over any of the references applied to claim 1 above in view of Kim et al. 5,896,680. The references as applied to claim 1 above disclose all the limitations of the claim except for the texturizing members being fibers secured to the upper surface of the sole portion. Kim et al. '680 teaches that massaging or scrubbing members attached to the sole of a shoe can be made of fibers to aid in cushioning as well as massaging the user's

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foot during use. Therefore, it would have been obvious to make the projecting members of the references as applied to claim 1 above out of fibers, as taught by Kim et al. '680, to aid in cushioning the user's foot in the shoe as well as absorbing and applying the therapeutic solution to the user's foot.

6. Claim 10 is rejected under 35 U.S.C. 103(a) as being unpatentable over the references as applied to claim 1 in paragraph 2 above in view of Kim et al. 5,896,680. The references as applied to claim 1 in paragraph 2 above disclose all the limitations of the claim except for the texturizing members being fibers secured to the upper surface of the sole portion. Kim et al. '680 teaches that massaging or scrubbing members attached to the sole of a shoe can be made of fibers to aid in cushioning as well as massaging the user's foot during use. Therefore, it would have been obvious to make the projecting members of the references as applied to claim 1 in paragraph 2 above out of fibers, as taught by Kim et al. '680, to aid in cushioning the user's foot in the shoe as well as absorbing and applying the therapeutic solution to the user's foot.

7. Claims 14 and 15 are rejected under 35 U.S.C. 103(a) as being unpatentable over the references as applied to claim 13 in paragraph 2 above in view of Palmer et al. 4,622,035. The references as applied to claim 13 in paragraph 2 above disclose all the limitations of the claim except for the sealing means being hook and loop or snap fastening members. Palmer et al. '035 teaches that the sealing member that seals off the top portion of the boot to prevent the escape of the therapeutic material during use can contain hook and loop material to allow quick and easy adjustable closing of the upper for different sized legs. Therefore, it would have been obvious to make the sealing means of the references as applied to claim 13 in paragraph 2 above with hook and loop means to allow for quick and easy adjustability of the closing means, as taught by Palmer et al. '035. With respect to the snap fasteners, snap fasteners are art accepted equivalent fastening means to hook and loop means.

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Therefore, it would have been obvious to replace the hook and loop means with the art accepted equivalent snap fasteners to quickly close the upper portion of the boot.

#### OTHER APPLICATION ISSUES

8. It has been noticed by the examiner that upon filing of the current Continuation application by the Applicant, a Paper entitled Preliminary Amendment was concurrently filed. This paper contained the serial number of the parent application as well as a request for an extension of time of the parent application and a response to the examiner's Office Action in the parent application. This paper amended the amended claims of the parent application and not the original claims presented in the instant application. Therefore, this amendment was considered improper for the current application. The above Office Action is based on the original claims as filed in this application without any amendments thereto.

#### *Conclusion*

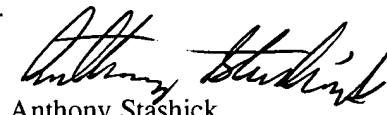
9. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure are listed on form 892 enclosed herewith.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Anthony Stashick whose telephone number is 703-308-3876. The examiner can normally be reached on Monday through Thursday from 6:30 am until 4:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mickey Yu can be reached on 703-308-2672. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Anthony Stashick  
Primary Examiner  
Art Unit 3728

ADS